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REFERENCE TITLE: **ASRS; credited service purchase**

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
First Regular Session  
2005

# **HB 2474**

Introduced by  
Representative McClure

**AN ACT**

**AMENDING SECTION 38-747, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-747, Arizona Revised Statutes, is amended to  
3 read:

4 38-747. Purchase of credited service; payment; limitations;  
5 definitions

6 A. A member who purchases credited service pursuant to section 38-738,  
7 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

8 1. Make payments directly to ASRS as provided in subsection H of this  
9 section.

10 2. Elect to have the member's employer make payments as provided in  
11 subsection B of this section.

12 B. A member may elect to have the member's employer make payments for  
13 all or any portion of the amounts payable for the member's purchase of  
14 credited service pursuant to the sections prescribed in subsection A of this  
15 section through a salary reduction program in accordance with the following:

16 1. The amounts paid pursuant to a salary reduction program are in lieu  
17 of contributions by the electing member. The electing member's salary or  
18 other compensation shall be reduced by the amount paid by the employer  
19 pursuant to this subsection. For the purposes of this paragraph, "other  
20 compensation" includes a member's termination pay.

21 2. The member shall make an election pursuant to this subsection at  
22 any time on or after the date the member elects to purchase credited service  
23 pursuant to the sections prescribed in subsection A of this section and  
24 before the member's termination of employment. The election shall specify  
25 the number of payroll periods that deductions will be made from the member's  
26 compensation and the dollar amount of deductions for each payroll period  
27 during the specified number of payroll periods. In the case of an election  
28 to utilize all or any part of the member's termination pay to purchase  
29 credited service, the member's election shall be made at least three full  
30 calendar months before the date of the member's termination of employment and  
31 entitlement to receive the termination pay. After an election is made  
32 pursuant to this subsection, the election is binding on and irrevocable for  
33 the member and the member's employer during the member's remaining period of  
34 current employment. After a member makes an irrevocable election pursuant to  
35 this subsection, the member does not have the option of choosing to receive  
36 the contributed amounts directly. For the purposes of this paragraph,  
37 "termination pay" means any lump sum that is paid at the member's termination  
38 of employment for accrued vacation, sick leave or overtime pay.

39 3. A member who makes an irrevocable election pursuant to this  
40 subsection to have the member's employer make payments for less than all of  
41 the amounts payable for the member's purchase of credited service may  
42 irrevocably elect to have the member's employer make payments for all or any  
43 portion of the remaining amounts payable for the member's purchase of  
44 credited service. A member who makes one or more irrevocable elections  
45 pursuant to this subsection may also make other contributions to ASRS  
46 pursuant to subsection H of this section to the extent of any remaining

1 amounts payable for which the member has not made an election pursuant to  
2 this subsection. An additional election or contribution with respect to a  
3 portion of the amounts payable for the member's purchase of credited service  
4 does not alter, amend or revoke an irrevocable election already made pursuant  
5 to this subsection for any other portion of the amounts payable for the  
6 member's purchase of credited service.

7 4. If on termination of the member's current employment all amounts  
8 have not been paid to ASRS pursuant to the member's irrevocable election  
9 pursuant to this subsection, the member may pay ASRS, within thirty days  
10 after the member's termination of employment and subject to other limitations  
11 prescribed in this section, all or any portion of the unpaid amounts as  
12 provided in subsection H of this section. These payments do not alter, amend  
13 or revoke any irrevocable election already made pursuant to this subsection  
14 with respect to any amount to be paid by the member's employer while the  
15 member is employed by the member's employer.

16 5. Amounts paid by an employer pursuant to this subsection shall be  
17 treated as employer contributions for the purpose of determining tax  
18 treatment under the internal revenue code. The effective date of employer  
19 payments pursuant to this subsection shall not be before the date ASRS  
20 receives notification from the United States internal revenue service that  
21 pursuant to section 414(h)(2) of the internal revenue code the amounts paid  
22 by an employer pursuant to this subsection will not be included in the  
23 member's gross income for income tax purposes until those amounts are  
24 distributed by refund or retirement benefit payments.

25 6. Unless otherwise provided, member contributions paid by an employer  
26 pursuant to this subsection are treated for all other purposes under ASRS in  
27 the same manner and to the same extent as member contributions that are not  
28 paid by an employer pursuant to this subsection. ASRS shall not grant  
29 credited service for contributions made pursuant to this subsection until  
30 those contributions are received by ASRS. ASRS may assess interest or  
31 administrative charges attributable to any salary reduction election made  
32 pursuant to this subsection. The interest or administrative charges shall be  
33 added to the amount of contributions that is made to ASRS by the member each  
34 payroll period and that is paid by the member's employer. The interest or  
35 administrative charges shall not be treated as member contributions for any  
36 purposes under this article and a member or a member's beneficiary does not  
37 have a right to the return of the interest or administrative charges pursuant  
38 to any other provision of this article. Interest assessed pursuant to this  
39 subsection shall be at the rate specified by the board pursuant to section  
40 38-711, paragraph 2.

41 C. A member who elects before July 1, 1999 to receive retirement  
42 benefits based on section 38-771, subsection C, paragraph 2 or a member who  
43 elects to make contributions to ASRS pursuant to section 38-771.01,  
44 subsection F, paragraph 4 shall either make the member's additional  
45 contributions required pursuant to section 38-771, subsection E or allowed  
46 pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as

1 provided in subsection H of this section or shall elect to have the member's  
2 employer make payments for those additional contributions as provided in  
3 subsection D of this section. A member who elected to be covered or who was  
4 deemed to be covered by section 38-771 on or before December 31, 1995 or who  
5 elects to make member contributions pursuant to section 38-771.01, subsection  
6 F, paragraph 3 is deemed to have made an irrevocable election pursuant to  
7 subsection D of this section to make the member's contributions to ASRS that  
8 are required by section 38-771, subsection D or allowed by section 38-771.01,  
9 subsection F, paragraph 3.

10 D. Any member contributions that are required by section 38-771,  
11 subsection D or that are allowed pursuant to section 38-771.01, subsection F,  
12 paragraph 3 are deemed to be made by the member to ASRS through a salary  
13 reduction program in accordance with the following:

14 1. A member may make member contributions pursuant to section 38-771,  
15 subsection E or section 38-771.01, subsection F, paragraph 4 through a salary  
16 reduction program elected pursuant to this subsection. If a member makes an  
17 irrevocable election pursuant to this subsection before July 1, 1999 to have  
18 the member's employer make payments for additional contributions pursuant to  
19 section 38-771, subsection E, the election continues in effect from and after  
20 June 30, 1999 and shall not be revoked, amended or altered by any election  
21 made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant  
22 to a salary reduction program are in lieu of contributions by the electing  
23 member. The member's salary or other compensation shall be reduced by the  
24 amount paid by the employer pursuant to this subsection.

25 2. Before a member's termination of employment, the member may make an  
26 election pursuant to this subsection at any time after the date the member  
27 elects to receive retirement benefits based on section 38-771, subsection C,  
28 paragraph 2 but before July 1, 1999 or at any time after the member elects to  
29 make member contributions pursuant to section 38-771.01, subsection F,  
30 paragraph 4. The election shall specify the number of payroll periods that  
31 deductions will be made from the member's compensation and the dollar amount  
32 of deductions for each payroll period during the specified number of payroll  
33 periods. After an election is made pursuant to this subsection, the election  
34 is binding on and irrevocable for the member and the member's employer during  
35 the member's remaining period of current employment.

36 3. After a member makes or is deemed to have made an irrevocable  
37 election pursuant to this subsection, the member does not have the option of  
38 choosing to receive the contributed amounts directly. A member who makes an  
39 irrevocable election pursuant to this subsection to have the member's  
40 employer make payments for less than all of the amounts payable for the  
41 member's additional contributions allowed by section 38-771.01, subsection F,  
42 paragraph 4 may irrevocably elect to have the member's employer make payments  
43 for all or any portion of the remaining amounts payable for the member's  
44 additional contributions. A member who makes one or more irrevocable  
45 elections pursuant to this subsection may also make other contributions to  
46 ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to

1 subsection H of this section to the extent of any remaining amounts payable  
2 for which the member has not made an election pursuant to this subsection.  
3 An additional election or contribution with respect to a portion of the  
4 amounts payable for the member's additional contributions pursuant to section  
5 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an  
6 irrevocable election already made pursuant to this subsection for any other  
7 portion of the amounts payable for the member's additional contributions  
8 allowed by section 38-771.01, subsection F, paragraph 4.

9 4. If on termination of the member's current employment all amounts  
10 have not been paid to ASRS pursuant to the member's irrevocable election  
11 pursuant to this subsection, the member may pay ASRS, within thirty days  
12 after the member's termination of employment and subject to other limitations  
13 prescribed in this section, all or any portion of the unpaid amounts as  
14 provided in subsection H of this section. These payments do not alter, amend  
15 or revoke any irrevocable election already made pursuant to this subsection  
16 with respect to any amount to be paid by the member's employer while the  
17 member is employed by the member's employer.

18 5. Amounts paid by an employer pursuant to this subsection shall be  
19 treated as employer contributions for the purpose of determining tax  
20 treatment under the internal revenue code. The effective date of employer  
21 payments pursuant to this subsection shall not be before the date ASRS  
22 receives notification from the United States internal revenue service that  
23 pursuant to section 414(h)(2) of the internal revenue code the amounts paid  
24 by an employer pursuant to this subsection will not be included in the  
25 member's gross income for income tax purposes until those amounts are  
26 distributed by refund or retirement benefit payments.

27 6. Unless otherwise provided, member contributions paid by an employer  
28 pursuant to this subsection are treated for all other purposes under ASRS in  
29 the same manner and to the same extent as member contributions that are not  
30 paid by an employer pursuant to this subsection.

31 E. The following limits apply to contributions to ASRS:

32 1. Except to the extent paragraphs 2 and 3 of this subsection apply to  
33 certain contributions made by a member to ASRS and to the extent permitted  
34 under section 414(v) of the internal revenue code, if applicable, in any one  
35 limitation year, the annual additions contributed or allocated to ASRS for or  
36 on behalf of a member shall not exceed the lesser of either:

37 (a) Forty thousand dollars or a larger amount that is prescribed by  
38 the board and that is due to any cost of living adjustment announced by the  
39 United States secretary of the treasury pursuant to section 415(d) of the  
40 internal revenue code. The board shall increase the amount prescribed by  
41 this subdivision as of the effective date of the increase announced by the  
42 United States secretary of the treasury.

43 (b) One hundred per cent of the member's compensation for the  
44 limitation year. The compensation limit prescribed in this subdivision does  
45 not apply to any contribution to ASRS for medical benefits after a member's  
46 separation from service, within the meaning prescribed in section 401(h) or

1 419A(f)(2) of the internal revenue code, that is otherwise treated as an  
2 annual addition.

3 2. Unless paragraph 4 of this subsection applies, for plan years  
4 beginning on or after July 1, 1998, in any one limitation year, the annual  
5 additions credited to ASRS for or on behalf of a member who makes  
6 contributions to ASRS to purchase credited service pursuant to section  
7 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable  
8 election has not been made pursuant to subsection B of this section shall not  
9 exceed the greater of either:

10 (a) The requirements of section 38-769. For the purposes of applying  
11 the limits prescribed in section 38-769 under this subdivision, the accrued  
12 benefit derived from the contributions shall be treated as an annual benefit  
13 and the reduced limit for certain early retirement in section 38-769,  
14 subsection C, paragraph 2 does not apply.

15 (b) Except as provided in paragraph 3 of this subsection, the  
16 requirements of paragraph 1 of this subsection. The contributions shall be  
17 treated as annual additions and any of the member's other annual additions  
18 for the limitation year shall be taken into account. For the purposes of  
19 applying the requirements of paragraph 1 of this subsection under this  
20 subdivision, the percentage of compensation limit in paragraph 1, subdivision  
21 (b) of this paragraph does not apply.

22 3. For plan years beginning on or after July 1, 1998, the requirements  
23 of paragraph 1 of this subsection shall not be applied to reduce the amount  
24 of credited service that may be purchased by an eligible member pursuant to  
25 section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the  
26 amount of credited service allowed to be purchased pursuant to those sections  
27 on August 5, 1997 without the application of any of the limits prescribed in  
28 this section or section 415 of the internal revenue code. For the purposes  
29 of this paragraph, "eligible member" means a person who first becomes a  
30 member of ASRS before July 1, 1999.

31 4. Member contributions to ASRS to purchase credited service pursuant  
32 to section 38-743, 38-744 or 38-922 shall not be made by a member if  
33 recognition of that service would cause a member to receive a retirement  
34 benefit for the same service from ASRS and one or more other retirement  
35 plans. This paragraph does not apply to either of the following:

36 (a) Contributions made by an eligible member as defined in paragraph 3  
37 of this subsection, except that any service purchase by an eligible member is  
38 subject to any other limitations, including limitations on duplicative  
39 service purchase, otherwise provided in this article.

40 (b) Any member contributions with respect to which an irrevocable  
41 election has been made by a member pursuant to subsection B of this section,  
42 except that the service purchase is subject to any other limitations,  
43 including limitations on duplicative service purchase, otherwise provided in  
44 this article.

45 F. If a member's contributions are subject to the limitations of  
46 subsection E of this section, the contributions shall be treated as being

1 made to a separate defined contribution plan. If the member's contributions  
2 exceed the limits prescribed in subsection E of this section when taking into  
3 account other member and employer contributions to ASRS on behalf of the  
4 member for the limitation year, the amount to be paid by the member shall be  
5 reduced to not exceed the limits prescribed in subsection E of this section  
6 and the remaining amount shall be carried forward to the next limitation  
7 year, unless the limits are exceeded in the next limitation year. If the  
8 limits are exceeded in the next limitation year, the procedure prescribed by  
9 this subsection shall be repeated until all payments have been made.

10 G. If, after the application of subsection F of this section, the  
11 annual additions on behalf of a member exceed the limitations prescribed in  
12 subsection E of this section, ASRS shall dispose of excess amounts by either  
13 of the following:

14 1. Returning to the member any contributions that are made by the  
15 member and that are nondeductible under the internal revenue code.

16 2. Holding the amounts in a suspense account established pursuant to  
17 subsection L of this section and allocating the amounts as either member or  
18 employer contributions for the benefit of the member in the next limitation  
19 year and before any further member or employer contributions are made that  
20 would constitute annual additions made to a defined contribution plan  
21 pursuant to section 415 of the internal revenue code. ASRS shall allocate  
22 contributions as prescribed in this section, and the amount allocated shall  
23 reduce the amount of the member or employer contributions for the limitation  
24 year in which the allocation is made.

25 H. To the extent that a payment under this subsection does not alter,  
26 amend or revoke any one or more currently effective irrevocable elections  
27 made by the member pursuant to subsection B or D of this section, the board  
28 may accept contributions made pursuant to section 38-771 or member  
29 contributions for the payment for credited service purchases pursuant to  
30 section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions  
31 made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in  
32 part, by any one or a combination of the following methods:

33 1. In lump sum payments.

34 2. Subject to the limitations prescribed in sections 401(a)(31) and  
35 402(c) of the internal revenue code and subsection J of this section,  
36 accepting a direct rollover of or a contribution by a member of an eligible  
37 rollover distribution from one or more:

38 (a) Retirement programs that are qualified under section 401(a) or  
39 403(a) of the internal revenue code.

40 (b) Annuity contracts described in section 403(b) of the internal  
41 revenue code.

42 (c) Eligible deferred compensation plans described in section 457(b)  
43 of the internal revenue code that are maintained by a state, a political  
44 subdivision of a state or any agency or instrumentality of a state or a  
45 political subdivision of a state.

1           3. Subject to the limitations prescribed in section 408(d)(3)(A)(ii)  
2 of the internal revenue code, accepting from a member a rollover contribution  
3 of that portion of a distribution from an individual retirement account or  
4 individual retirement annuity described in section 408(a) or 408(b) of the  
5 internal revenue code that is eligible to be rolled over and would otherwise  
6 be includable as gross income.

7           4. Providing by rule that the contributions may be made in installment  
8 payments over a period of time.

9           I. To the extent that a payment under this subsection does not alter,  
10 amend or revoke any one or more currently effective irrevocable elections  
11 made by a member pursuant to subsection B or D of this section, the board may  
12 accept a direct trustee-to-trustee transfer from retirement programs that are  
13 qualified under section 401(a) or 403(a) of the internal revenue code, an  
14 annuity contract described in section 403(b) of the internal revenue code or  
15 an eligible deferred compensation plan described in section 457(b) of the  
16 internal revenue code for the payment for credited service purchases  
17 pursuant to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct  
18 trustee-to-trustee transfer is from a retirement program ~~which~~ **AND THAT** qualified  
19 under section 401(a) of the internal revenue code, ~~which~~ **AND THAT** includes a  
20 cash or deferred arrangement described in section 401(k) of the internal  
21 revenue code, the member on whose behalf the transfer was made is not  
22 eligible to retire under section 38-764, subsection J, ~~before~~ **before** the date the  
23 member attains ~~age fifty~~ **FIFTY-NINE** and one-half **YEARS OF AGE**.

24           J. ASRS shall separately account for all amounts rolled over or  
25 directly transferred to ASRS.

26           K. ASRS shall not grant credited service under section 38-738, 38-742,  
27 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of  
28 this section until the contributions are received by ASRS. ASRS may assess  
29 interest or administrative charges attributable to any installment payment  
30 made pursuant to subsection H, paragraph 4 of this section to purchase  
31 credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or  
32 38-922. The interest or administrative charges shall be added to the amount  
33 of contributions made to ASRS by the member. The interest or administrative  
34 charges shall not be treated as member contributions for any purposes under  
35 this article, and a member or a member's beneficiary does not have a right to  
36 the return of the interest or administrative charges pursuant to any other  
37 provision of this article. Interest assessed pursuant to this subsection  
38 shall be at the rate specified by the board pursuant to section 38-711,  
39 paragraph 2.

40           L. ASRS shall establish a suspense account that conforms with 26 Code  
41 of Federal Regulations section 1.415-6(b)(6) regarding excess annual  
42 additions.

43           M. If the member retires before all payments are made pursuant to this  
44 section, ASRS shall calculate the member's benefits based only on the  
45 payments actually made.



1           N. On satisfaction of the requirements of this section, ASRS shall  
2 adjust the member's credited service history and add any additional service  
3 credits acquired.

4           O. Annual additions on behalf of a member in any limitation year shall  
5 be the sum of:

6           1. The amount of the member contributions made to ASRS to purchase  
7 credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922  
8 and with respect to which an irrevocable election made pursuant to subsection  
9 B of this section is not in effect.

10          2. The amount of member and employer contributions made to ASRS on  
11 behalf of a member who elected or was deemed to have elected to receive  
12 retirement benefits pursuant to section 38-771 or who is entitled to benefits  
13 pursuant to section 38-771.01, except that, other than as provided in  
14 subsection P of this section, corrective contributions shall be considered  
15 annual additions for the limitation years to which the contributions relate  
16 and interest and gains shall not be considered as annual additions for the  
17 purpose of any limitation prescribed in this article or in section 415 of the  
18 internal revenue code. If the corrective contributions exceed the limit on  
19 annual additions for a limitation year prior to the limitation year in which  
20 the corrective contributions are contributed by the employer to ASRS, the  
21 retirement benefit attributable to the excess corrective contributions shall  
22 be treated as an excess benefit and shall be payable to the member as any  
23 other excess benefit is payable pursuant to section 38-774, and the employer  
24 shall pay the excess corrective contributions to the separate unfunded  
25 governmental excess benefit arrangement administered by the board pursuant to  
26 section 38-774.

27          3. Any member or employer contributions made to ASRS or any other plan  
28 that are treated as being made to a defined contribution plan maintained by  
29 an employer of the member.

30          4. Any forfeitures, including any income attributable to forfeitures,  
31 allocated for or on behalf of a member of ASRS or any other plan that are  
32 treated as being allocated under a defined contribution plan maintained by an  
33 employer of the member.

34          P. To the extent any portion of the subject benefits, if treated as  
35 subject to the benefit limitations of section 415(b) of the internal revenue  
36 code, exceed the applicable limitation on benefits pursuant to section 38-769  
37 for the form of distribution, a percentage of corrective contributions and  
38 interest and gains shall be treated as annual additions for the limitation  
39 year in which contributed by the employer to ASRS. This percentage of  
40 corrective contributions and interest and gains shall be equal to the  
41 percentage determined by dividing the subject benefits that exceed the  
42 limitation on benefits pursuant to section 38-769 by the subject benefits. If  
43 the corrective contributions and interest and gains that are treated as  
44 annual additions for the limitation year in which the corrective  
45 contributions and interest and gains are contributed by the employer to ASRS  
46 exceed the limit on annual additions for the limitation year, the retirement

1 benefit attributable to the excess shall be treated as an excess benefit and  
2 shall be payable to the member as any other excess benefit is payable  
3 pursuant to section 38-774, and the employer shall pay the excess to the  
4 separate unfunded governmental excess benefit arrangement administered by the  
5 board pursuant to section 38-774.

6 Q. Subsection 0 of this section shall be construed and interpreted in  
7 accordance with 26 Code of Federal Regulations section 1.415-6 to the extent  
8 that section is applicable.

9 R. For the purposes of this section:

10 1. "Compensation" has the same meaning prescribed in section 38-769.

11 2. "Corrective contributions" means any contributions that are paid by  
12 an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that  
13 are attributable to employer contributions that should have been made for  
14 prior limitation years.

15 3. "Defined contribution plan" has the same meaning prescribed in  
16 section 38-769.

17 4. "Interest and gains" means employer contributions to ASRS pursuant  
18 to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are  
19 attributable to earnings and supplemental credits that would have been earned  
20 or added to a member's annuity payment.

21 5. "Limitation year" has the same meaning prescribed in section  
22 38-769.

23 6. "Subject benefits" means the retirement benefit received by a  
24 member pursuant to section 38-771.01 minus the sum of the portion of such  
25 retirement benefit attributable to contributions that were made by or on  
26 behalf of the member to the defined contribution program administered by ASRS  
27 for periods before July 1, 1981 and contributions that were made by the  
28 member after June 30, 1981 and that were not picked up as provided in section  
29 414(h)(2) of the internal revenue code.